156-601

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RECORD, CASE NO. 14621.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., ~~461~~. 158

LEVERETT SALTONSTALL, COLLECTOR OF CUSTOMS FOR THE REVENUE DISTRICT OF BOSTON AND CHARLESTOWN, PLAINTIFFS IN ERROR,

vs.

WEIBUSCH & HILGER, LIMITED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED MAY 4, 1891.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Weibusch & Hilger, limited, a corporation duly organized according to the laws of the State of New York, and having its usual place of business in the city, county, and State of New York, plaintiffs, and Leverett Saltonstall, collector of customs for the revenue district of Boston & Charlestown, defendant, in an action of contract, a manifest error has happened to the great damage of the said defendant as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all thing concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the fifth day of May next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the seventh day of April, in the year of our Lord one thousand eight hundred and ninety-one.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by
THOS. L. NELSON,
Dist. judge.

2 CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts, ss:

And now, here, the judges of the circuit court of the United States, in and for the district of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I, John G. Stetson, clerk of said circuit court of the United States, in and for the district of Massachusetts, have hereto set my hand and the seal of said court this twenty-seventh day of April, A. D. 1891.

[SEAL.] JOHN G. STETSON, *Clerk.*

1643——1

3 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston within and for the district of Massachusetts, on Wednesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and ninety.

Before the honorable Le Baron B. Colt, circuit judge.

4 WEIBUSCH & HILGER, LIMITED, a corporation duly organized according to the laws of the State of New York, and having its usual place of business in the city, county, and State of New York, plaintiff,
v.
LEVERETT SALTONSTALL, collector of customs for the revenue district of Boston and Charlestown, in the district of Massachusetts, defendant.

3311. Law docket.

In an action of contract; ad damnum, $500.

Plaintiff's declaration.—(Filed with writ.)

Plaintiff says:

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of Boston.

2nd. That plaintiff was during said times a corporation doing business under the name of Weibusch & Hilger, limited, and as such duly imported and entered at the port of Boston the goods described in the bill of particulars annexed.

3d. That plaintiff in order to obtain said goods was compelled to pay the defendant, as such collector, in excess of the lawful rate of duty on said goods, and of the amount required by law, the sum of one hundred four and $\frac{35}{100}$ dollars.

4th. That plaintiff filed with said defendant due and timely protest in writing upon entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto.

5th. That plaintiff made due and timely appeal on said entry to the Secretary of the Treasury, who affirmed the decision of the defendant upon said entry.

6th. That the bill of particulars, hereto annexed, states the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protest, of the appeal to the Secretary of the Treasury, and of his decision thereon, if rendered, together with the other particulars required by law, and is made a part hereof.

7th. That said sum, so exacted as aforesaid, has never been repaid to plaintiff, and is still due and owing to it.

Wherefore plaintiff demands judgment against defendant for the sum so exacted, as aforesaid, with interest on the sum named in the bill of particulars from the date of payment as appears thereby, together with the costs and disbursements of this action.

CHARLES P. SEARLE,
Attorney for plaintiff.

5 *Bill of particulars.*

[Name of importer, WEIBUSCH & HILGER, limited.]

Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Date of entry at custom-house.
Pincers, scythes, and grass hooks.	Norge	Antwerp	March 1, 1889..	March 19, 1889.

Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
March 19, 1889	104.35	April 9, 1889.....	April 9, 1889 ..	May 25, 1889.

The writ in this cause is dated the nineteenth day of August, A. D. 1889, and was duly entered at the October term of this court, A. D. 1889, when and where the parties appeared by their respective attorneys.

This cause was thence continued from term to term to this present October term, A. D. 1890, when the following answer is filed:

Answer.—(*Filed Nov.* 12, 1890.)

And now comes the defendant and for answer denies each and every allegation in the plaintiff's declaration contained as fully and specifically as if each were separately and specifically denied.

FRANK D. ALLEN,
U. S. Attorney.

Issue being thus joined, the honorable Thomas L. Nelson, district judge, sitting and holding the court, the cause, after a full hearing, is committed to a jury sworn according to law to try the issue, who, after hearing all matters and things concerning the same, return their verdict therein and upon oath say: The jury find for the plaintiff, and assess damages in the sum of one hundred and eight dollars and twenty-three cents.

6 The following bill of exceptions is presented by the defendant and is allowed as of March 19, 1891, before the jury left the bar:

Defendant's bill of exceptions.—(*Filed March* 19, 1891.)

WEIBUSCH & HILGER, LIMITED,
v.
LEVERETT SALTONSTALL, COLLECTOR. } No. 3311, Law docket.

Action to recover back duties.

The plaintiff, in March, 1889, imported into the port of Boston certain pincers, scythes, and grass hooks which were classified by the defendant for duty, under the last clause of Schedule C of the tariff act of March 3d, 1883 (22 U. S. Sts., 501), which provides for "manufactures, articles, or wares not specifically enumerated or provided for in this act, composed wholly or in part of iron, steel, * * * or any other metal, and

whether partly or wholly manufactured, forty-five per centum ad valorem." And the duty in accordance with this provision of forty-five per cent ad valorem was exacted of the plaintiffs by the defendant as collector of customs at the port of Boston.

Against this classification and exaction the plaintiffs protested, and in due time brought suit, contending that these articles were dutiable at two and one-half cents a pound instead of forty-five per cent ad valorem under the provisions of Schedule C (22 U. S. Sts., page 498) for "forgings of iron and steel, or forged iron, of whatever shape or in whatever stage of manufacture, not specially enumerated or provided for in this act, two and one-half cents per pound."

The case was heard by Nelson, J., and a jury. The court, however, directed a verdict for the plaintiff upon the following evidence, which, in accordance with a suggestion of the court, is substantially reported in full:

HENRY I. SEYMOUR, a witness on behalf of the plaintiff, testified that his residence was in the city of New York, and that he had been for about twelve years in the employ of the plaintiff; that he had seen articles similar to the articles in suit made in a factory in Remschied, in Germany, and in describing the process of manufacture he testified as follows:

Q. What is the name of this?

A. The name in this country is grass hook; the German name is sickle, and for that reason they are called sickles, too.

Q. We then have, I will say, four pairs pincers, two grass hooks and one scythe?

A. Yes, sir.

Q. You call that a scythe?

A. I call that a scythe; yes, sir.

Q. About—I will begin again. Where did you first see these specific articles?

A. In our store in New York when they were unpacked from the case in which they were imported.

7 Q. What importation was that?

A. An importation of goods that came to New York via Boston, and reached New York in March, 1889.

Q. That is, I am to understand that these particular articles are part of the identical importation now in issue?

A. They are.

Q. Being the identical articles that were imported?

A. The identical articles; yes, sir.

Q. Whether there were other articles in the same general importation of similar description to these?

A. Yes, sir; there were.

Q. Do you know of any difference between them?

A. I know of no difference whatever.

Q. Do you know where these articles were made?

A. I do.

Q. Where?

A. In Remschied, in Germany.

Q. At a factory or at a manufactory?

A. They do not have manufactories there; they are small men that manufacture usually—a man with one or two helpers in a little shop side of his house.

Q. Have you seen such articles made?

A. Yes, sir; pincers similar to these.

Q. Will you describe the process of making as you have observed it?

A. Well, take those pincers, for instance. Before anything is done to it it consists of two pieces of iron—flat pieces; this is an eight-inch pincer, and two strips of iron are each eight inches long. The first thing that is done is to put the two pieces into the fire, so that one end of each piece is heated—that would be this end and this end.

Q. The two jaws?

A. The two jaws; the pieces are then taken out and the man at the anvil takes a chisel and a hammer and splits this end. The ends, of course, at that time are square. He splits this end and this end, and inserts in it a small piece of steel, then with the hammer he strikes each end, which makes the end head and holds the steel firmly in. He then puts the pieces of iron back into the fire and lets them get hot, so they will be soft and ductile to the hammer, and the next thing he does is to shape these jaws.

Q. With what?

A. With the hammer. After the jaws are shaped the pieces of iron are again put back into the fire—well, one thing I omitted to say—when he is shaping this he punches the hole.

Q. With what?

A. With a punch and hammer, which is the hole that this rivet goes through. Then the two pieces are put into the fire again. This, of course, has been perfectly flat here, and the next thing to do is to make these shanks round. So he hammers them out round. Then the claw has got to be finished, and this knob; so in order to do that he turns the pieces round, puts them in the fire again, lets them get hot, brings them out and with his hammer shapes this knob and hammers this down flat to a point, and, with his chisel, gouges a little piece to make this claw. He then has got two loose pieces up to this time which have not been riveted. He then, while the pieces are cold, puts this rivet through. The rivet, of course.

Q. How is the rivet made?

A. The rivet has been hammered out of a small rod, and that is put through here, and he can not clinch it, because it is cold and can not
8 be handled, so he puts it into the fire again to get the rivet hot, so that he can put this head on it, and then he hammers the head on to this rivet. That completes—practically completes—the tool. The next thing to do is with a rough file to bring these jaws to a point and rub this here, and then the pincer is—and is then ready for use.

Q. I understand from you that these pincers consist of five parts, two handles of iron?

A. Yes, sir.

Q. Two jaws of steel inserted in the iron?

A. Yes, sir.

Q. And a rivet?

A. Yes, sir.

Q. Connecting the parts?

A. Yes, sir.

Q. Now, let us look first at the iron. By what process have these two handles been produced—forging?

A. Yes, sir; they have been forged.

Q. By what process has the rivet been produced?

A. That has been forged.

Q. By what process is the rivet driven through the two other pieces and headed?

A. With the hammer.

Q. Is that forging?

A. Forging.

Q. By what process have the two pieces of steel been produced?

A. Well, they have been—I do not know how they have been produced.

Q. How were they put in?

A. By the hammer.

Q. Put in by forging?

A. Yes, sir.

Q. Forced in and hammered down?

A. Yes, sir.

Q. That is the process they take to produce these parts in their present combination?

A. They are all forged; all of them.

Cross-examination:

Q. (By Mr. ALLEN.) Mr. Witness, these pincers that you have been talking about here have an edge upon them, haven't they?

A. Yes, sir.

Q. Now, did I understand you to say that that edge was reached by hammering or forging?

A. No, sir; that edge was filed.

Q. So that after hammering, after forging, came the labor which was put upon it in filing to make the edge?

A. Yes, sir.

Q. Did you describe to the jury how that is done?

Q. Won't you describe how that is done?

Q. (By the COURT.) How much is steel; won't you show?

A. It is a small piece of steel that is inserted between this [pointing to pincer] edge and that edge. That, I say, was run back to about there. It is a very small piece one-fourth of an inch or half an inch. Well, a quarter of an inch would be nearer it.

Q. (By Mr. ALLEN.) And right in the line suggested by the judge, that small piece extends a quarter of an inch each way; how has that steel been put in—welded in?

A. Yes, sir; been welded in; not any flux used; that is the first thing that is done. The end of the pincers is split open and steel is inserted and it is hammered.

Q. Would you say that the insertion of the steel was a welding?

A. Yes, sir; I would.

Q. And that is on either side of these jaws about one-quarter of an inch?

A. Yes, sir.

9 Q. This is one of the pincers in the rough state?

A. Yes, sir.

Q. Now, in that shape what is done to put that pincer into that shape on the edge and finished?

A. The process is to rivet these; you will see the shape of that is very similar to that finished pincer.

Q. How do you get the edge?

A. Get the edge by filing it here and filing it there.

Q. Filing it above and below?

A. Yes, sir; filing it there and filing it there; very little filing on top; it is almost even there.

Q. And filing more or less; the amount of filing would vary, I suppose?

A. Well, practically not.

Q. After you have filed them, what is the process to put them in that shape?

A. Then they are usually put, I think, on the emery wheel.

Q. And put upon the emery wheel, that is to polish?

A. To polish.

Q. After they are put upon the emery wheel and polished, then what else is done?

A. Nothing.

Q. That finishes them, does it?

A. That finishes them.

Q. I suppose they are polished in separate pieces?

A. No, sir; they are polished after they are put together.

Q. (By the COURT.) On the edge?

A. On the edge.

Q. On the lower side?

A. No polishing on the lower side.

Q. (By Mr. ALLEN.) The polishing is here?

A. Yes, sir.

Q. And on that side?

A. Yes, sir; right here. It is put on the wheel; it takes a few seconds.

Q. Well, is this side here filed, too, before it is put on the wheel?

A. I do not think that is filed.

Q. Do you know whether it is or not?

A. No, sir; I do not know positively.

Q. But it is put upon the wheel?

A. Probably a file is rubbed over it.

Q. Now, what do you understand ordinarily that a forging is in a commercial sense?

A. I am not familiar with it.

Mr. STETSON. I object to the question as immaterial and irrelevant.

Mr. ALLEN. I understood the witness to say he was not familiar.

Q. Do you mean to say that?

A. I intended to say that and add something with it.

Q. Now, Mr. Witness, do you purchase these, or do you sell it from your counter as a forging or as an article of merchandise?

Mr. STETSON. I object; it is immaterial and irrelevant.

(After a brief discussion the court said:)

NELSON, J. I think I will make this ruling: I will admit this as a matter of interest to the court, subject to your objections, and subject to having it struck out entirely from the case if later it turns out that this term ought not to have any other meaning than that which is its ordinary meaning.

Mr. STETSON. Your honor will grant me an exception?

NELSON, J. Certainly; yes, sir.

A. We sell these as a carpenter's pincers.

Q. Now, the other branch of the question?

10 (Question again read by the stenographer.)

A. I have said how we sold it, and we buy these in the same way as a pincers.

Q. This is an article of merchandise?

A. Is an article of merchandise.

Redirect:

Q. (By Mr. STETSON.) Have you any articles in your establishment that you sell as a forging distinctly?

A. No, sir.

Q. Have you any article in your establishment that you advertise as a forging distinctively?

A. No, sir.

Q. In the course of your business or trade, do you undertake to hold out any class of goods as being forged distinctively, as apart from their particular designation?

A. No, sir.

Q. So when you sold these goods as carpenters' pincers did you by that designation exclude them from the description of forgings?

A. No, sir.

Q. You referred to the welding of the steel upon the jaws of the pincers. Is that welding a forging process?

A. Yes, sir.

Q. Do you call the polishing a forging process?

A. No, sir.

Q. Do you call the tempering a forging process?

A. No, sir.

Q. The tempering is done upon the forged article, is it not?

A. Yes, sir.

Q. You do not forge a tempered article, but you temper a forged article.

A. Temper a forged article.

Q. And this process of putting on the edge and polishing is the finishing process upon a forged article, is it not?

A. Yes, sir.

Q. Now, have you made any computation as to the comparative cost of what is called the non-forged process in comparison with the forging process in producing this forged article?

A. I have.

Q. What proportion would you say the non-forged process bore to the forging process?

A. I should say that it was about three or four per cent.

Q. Three or four per cent of the entire work is a non-forging process?
A. Yes, sir.
Q. And the rest is by the forging process in the original material?
A. Yes, sir.

Recross:

Q. (By Mr. ALLEN.) Do you know of articles being sold in market as forgings?
Mr. STETSON. I object again. The same ruling, I suppose, your honor?
A. Not in our line of business; I do not.
Q. In any line?
A. No, sir; I do not.
Q. Unable to state either way?
A. I am unable to state either way; it is out of my line of business.

11 Redirect:

Q. (By Mr. STETSON.) Is your business an extensive one?
A. It is confined generally to imported goods.
Q. Well, I mean in that class of goods; is it an extensive business?
A. In this class of goods, it is.
Q. In amount?
A. Yes, sir.
Q. In general distribution through the country?
A. Yes, sir.
Q. In length of time?
A. Yes, sir.
Q. How long a time has your house been dealing in this class of goods?
A. Well, the house was organized in '76 as the successor to a house in the same line of business.
Q. How long had that house continued?
A. That goes back into the '30's; I can not tell.
Q. And you do not know of any classification of forgings for the purposes of sale in this business?
A. No, sir.
Q. (By Mr. ALLEN.) You have been importing these for years, have you not?
A. Yes, sir.
Q. And you have always paid what duty on them?
A. Well, as far as my memory serves me, we have paid forty-five per cent.
Q. The contention of the Government in this case?
A. Yes, sir.
Q. (By Mr. STETSON.) Was this clause in the tariff before 1883, so far as you remember?
A. I have no knowledge of that fact.
Q. (By Mr. ALLEN.) Have you imported, since 1883, this class of goods?
A. We have.
Q. At forty-five per cent ad valorem?
A. Yes, sir.

Q. (By Mr. STETSON.) Have you made any claim for all the money the Government has wrongfully got out of you before this?

A. No, sir.

Recross-examination:

Q. (By Mr. ALLEN.) One thing I want to ask I omitted; I do not know whether it was brought out in the direct examination or not. How much, if any, expense is put upon these pincers and grass hooks and scythes after they are received by you here?

A. Nothing is done to them.

Q. Nothing is done?

A. No, sir; nothing is done to the pincers. We box the goods on this side.

Q. As to grass hooks and scythes?

A. On the grass hooks the handle is put on in order to make the goods sal'able; we do not always do that.

Q. You sell them sometimes without a handle?

A. We sell them sometimes without a handle.

Q. And how as to scythes?

A. We do not touch them; we never do anything to them.

Q. So that you sell the scythes as you receive them, and sell the grass hooks, sometimes putting on a handle, and sell pincers as they are received?

A. Yes, sir.

12 Redirect:

Q. (By Mr. STETSON.) Do you deliver these good generally to the trade or to the consumer?

A. We deliver them to what is called shippers; that is, houses that supply the trade.

Q. You do not deal directly with the man who uses the pincers or grass hooks?

A. No, sir.

Q. And you do not know what is further done before delivered to them?

A. No, sir; I do not.

JOHN C. WOLFE, a witness on behalf of the plaintiff, testified that he lived in New Jersey; formerly lived in Germany, and was a tool-maker, and that he had seen such articles as the articles in question made in Germany, and that he had such articles himself; and he stated, in answer to the question, "Have you made such things yourself?" as follows:

A. Yes, sir; I made a sickle, but I do not make a scythe. We made it what we call rough, and drive this part out, and the helper strike the sledge and flatten this part out here, and then commence and give them temper; after it was tempered and come out of the water, go into the fire again and get this color on it. That is regular tempered; fire and water do that. Fire do that after it come out of the water; that gives the blue color, and after this it get hammered again, because as soon as coming out of the water or wherever it is, it gets kind of crooked and has to be hammered straight again. After this is done it is run around a grindstone two or three times and drop it on the floor.

Q. It is a piece of steel?

A. Yes; all steel.

Q. What do you call the process that changes that piece of steel into this shape; what do you call it?

A. That is done by forging.

Q. That is forged?

A. Yes, sir.

Q. And all of these were produced in that way?

A. That is, all that way; yes, sir.

Cross-examination:

Q. (By Mr. ALLEN.) In what shape is the piece of steel when it first comes into the hands for the purpose of being made into a grass hook?

A. A straight piece of steel.

Q. A thick piece of steel?

A. It is a piece of flat steel about one-quarter of an inch or $\frac{5}{16}$ thick, and it is about $\frac{3}{4}$ wide, and if we do not have that kind we take a piece of square steel and drive it by hammer ourselves.

Q. Drive it out by hand with hammers?

A. Yes, sir; just at first.

Q. Then how did you say that rim was made?

A. There was a kind of hammer we called a setter or flatter.

Q. How does it run?

A. It is run by hand. I hold this piece of steel and move my flatter. My man has a sledge hammer and is going to strike, and I move it around like that, while he strikes until it gets cold. Then I have to put it in the fire again and heat it.

Q. The process of getting the temper in this is a pretty nice process, isn't it; requires a pretty skillful man, does it not?

A. Yes, sir; have to have an extra fire for this.

13 Q. You have to have a pretty skillful man, don't you?

A. Yes, sir.

Q. How does he know when the temper is sufficient? How does he know when it is properly tempered?

A. He knows by the color that is on it.

Q. He is guided by the color, is he?

A. Yes, sir.

Q. Therefore he has continually to watch it?

A. Yes, sir.

Q. How long is the process of tempering?

A. It do not take long; about a minute or a minute and a half.

Q. And sometimes it goes back, does it, for further tempering?

A. If it goes back we have to do it over again.

Q. Have to do all over again?

A. Yes, sir.

Q. Well, usually, a minute or a minute and a half completes it?

A. Yes, sir.

Q. Then it is taken out, is it?

A. Yes, sir.

Q. Is anything put on here?

A. Well, this comes in when forging the whole piece is done

Q. How is that made?

A. Well, that comes in as soon as we beat round with a hammer, a setter or flatter, we commence to put the point?

Q. How do you get that?

A. Get a hammer and drive it out like that.

Q. Do you file it any?

A. No, sir.

Q. Do you polish it?

A. No, sir.

Q. Do you put it on a grindstone?

A. Yes, sir, and turn it two times on each side and then drop it on the floor and it is done.

Q. Do you point it again after it is hot in the fire; tempered as you say?

A. Yes, sir; because it is getting all shapes, crooked when it comes out of the water. The water brings it every shape, every way, so when the temper comes in there is time for it, you can hammer it; after it is cold it bursts; you can not hammer it any more.

Q. So you have to hit it right after it comes out?

A. Yes, sir.

Q. Suppose it looks then a little crooked, what do you then do?

A. Well, we have to make it a little hot, so you can touch your finger.

Q. And then hammer it again?

A. Yes, sir.

Q. How do you obtain, Mr. Witness, this uniform shape?

A. We commence to flatten it piece by piece; it don't come at once.

Q. How do you get this here down to this point?

A. Well, the steel gets pointed off first.

Q. How do you get the taper?

A. It gets pointed off first with the hammer.

Q. Is it rolled at all?

A. Yes, sir.

Q. It is rolled some, is it?

A. Yes, sir.

Q. Is there any tool used on that except the hammer?

A. Nothing but hammer and grindstone.

Q. And the tempering is done at the forge by the forger, is it not?

A. Yes, sir.

Q. And the process goes on?

A. Yes, sir.

Q. He hammers piece, puts it into water, brings it back and hammers it again?

A. Yes, sir.

Q. And that is the result exclusively of the hammer and fire
14 and water and grinding?

A. Yes, sir.

Q. Now, from your observation, looking at that scythe, is that produced in the same way?

A. That is produced in the same way.

Q. (By Mr. ALLEN.) Did you ever make one of these scythes?

A. No; but they are made in the same shop, I know.

Q. Did you ever see them made?

A. Yes, sir.

Q. You never saw them made there yourself?

A. Yes, sir; they are made out of a piece of steel.

Q. Did you ever see them made yourself?

A. Not this kind; I saw some other kind made.

Q. (By Mr. STETSON.) From your observation and experience as a mechanic do you say that is made the same way?

A. Made just the same way; could not be made any other way.

Q. (By Mr. ALLEN.) You never made any of these yourself?

A. No, sir.

MICHAEL MCBARRON, a witness on behalf of the plaintiff, testified that he had been in the hardware business in the city of Boston for about ten years and that he had never sold goods of this kind, but something similar to the articles in question, and that he had seen them made in different parts of New England—in Winsted, Conn., in Ballston Spa, N. Y., and also in West Waterville, Me., and in a few other places. He stated as the reason of his watching the process of manufacture that he was a blacksmith by trade; worked in a blacksmith shop twenty years, and was always anxious to see how the goods were made that he sold. He testified as follows:

Q. What is the process by which these were made?

A. Well, we here in America, for a corn-knife or a grass-hook, any ordinary hook, for a corn-knife, take a piece of ordinary soft steel and simply hammer it out and point it; shape it something similar to this. Some corn-knives are long, almost straight. Then for a scythe, generally take a scythe of this kind in America here, take a piece of cast steel, what they call a piece of back steel, and take a piece of Norway iron about five or six inches long and draw it out pretty near the length of the scythe and put in a piece of cast-steel in front part for the edge, a piece of back steel in the back part to stiffen the scythe; then they put it into the fire and they draw it out under the hammer. Some made different from that. I could not say generally.

Q. Is that forging?

A. Yes, sir.

Q. Are all the processes you have described processes of forging?

A. Yes, sir.

Q. And whether this is the process by which these have resulted, in your opinion?

A. Yes, sir; the same thing; no more than in that process I speak of. They had cast steel, a soft quality of steel, and also a piece of Norway iron and draw it out under a hammer, a trip hammer.

Q. Whether this is the process by which these have resulted, in your opinion?

A. Yes, sir.

15 Cross-examination:

Q. (By Mr. ALLEN.) Do they roll them at all?

A. Yes, sir; I have seen them rolled some, but they are not rolled out. They put them under what is called a trip hammer. That is run by water power. That is drawn out first and they run in afterwards in a kind of groove or roll.

Q. Whether or no, in your opinion, these have ever been rolled? If you have not heard any evidence, should you say from looking at these they had been rolled?

A. I should not think they had been rolled, because there is the mark of the hammer all through this. I suppose they could take that and put it in the groove and turn it over and have a kind of groove underneath; because it shows the marks of the hammer all the way through on both sides.

Q. Any indication of any groove?

A. Well, I suppose they had a groove to work it in, although they could turn it over here and flat it down there. But marks of the hammer are on here. You see the hammer blow right there?

Q. That would be a little awkward, wouldn't it?

A. Well, that would. They do things awkward in Germany and all through Europe. They do it differently here from that.

Q. Whether you would say that had been rolled?

A. I cannot say that, because the marks of the hammer are all over it everywhere.

Q. You mean to say you could not say it had been, or could not say either way?

A. I should not think it was rolled; I should think it was hammered; if a man asked me if that was hammered or rolled, I should say hammered.

Q. How as to that being placed in any groove?

A. Well, it could be done by being placed in a groove, but it shows the marks all the way. If I was doing it I should make a groove for it; so much easier way.

Q. Is not it put in the groove here?

A. It don't indicate it; I do not know how they could do it that way, and do it so nice with a hammer.

Q. That is rather a surprise to you to learn that these can be done so nicely by hammering alone?

A. Yes, it is; it is done very well, so far as that is concerned, but there is a great many things done that I do not know anything about; something new all the time.

Q. You have had nothing to do with that class of goods?

A. No more than sell them; we sell them in a more finished state than that.

Q. Do you sell this class of goods?

A. No, sir.

Q. You do not sell this grade of pincers?

A. No, sir.

Q. Or this kind of pincers?

A. No, sir; blacksmith's pincers; horseshoer's pincers.

Q. These in this shape you call what?

A. Grass-hook.

Q. You would not call that a forging of iron and steel, would you; I mean in the commercial sense?

A. Well, if a man called for a grass-hook, if I was selling goods, I should sell him that.

Q. Suppose he called for a forging of iron and steel?

A. I would want to know what kind of forging he wanted; if
16 a man came in and called for a forging I would not hardly know what he wanted.

Q. You would not run for a grass hook would you?

A. I would as likely run for a horse nail as for a grass hook. You know nails are being cut now.

Q. These are ordinarily known in the market as grass hooks are they not?

A. Yes, sir; when they get a handle in them.

Q. Is this ordinarily known as a scythe?

A. That is what we would naturally call it.

Q. (By the COURT.) Are all these completed finished articles ready for use?

A. No, sir; I should not think they were. I have never seen any in market here in that form; generally finish them up ready for market.

Q. (By Mr. STETSON.) Is this the way it would be finished (exhibiting a finished article).

A. Yes; the general way they have them here

Q. (By the COURT.) How about the pincer?

A. Well, in regard to that we sell the pincers finished all over like the one he has got there, and pincers in America are generally made from all steel and finished up all polished bright.

Q. (By Mr. ALLEN.) Well, except the glitter which our brethren have exhibited here, with a wooden handle on here, this is just as useful, just as ready for use as the other is, is it not?

A. Well, after it is polished up properly it would answer the purpose after it has a handle on it.

Q. And then it is ready for use?

A. Well, I suppose it would be.

Q. (By Mr. STETSON.) You said that you were somewhat surprised that these articles could be produced by hammering without drawing; have you any doubt that they have been produced by hammering?

A. No, sir.

Q. Have you any doubt there is no rolling there?

A. No, sir; because the same marks are all over them. I think it is done entirely by hammering.

Q. I understand you to say that both processes might have been here?

A. Well, that is only supposition.

Q. Well, you still think that is possible, don't you?

A. Well, from the fact that I have seen them done in America I do not know in regard to——

Q. From your knowledge and what you have seen here, you think both processes may have obtained in producing these?

A. Yes, sir; but with the exception of the hammering here, that shows it has not been so, because the marks of the hammer is all over here, all parts back and front.

Q. (By Mr. ALLEN.) I understood you to say—if I am wrong you will correct me—that along with the hammering this might have been put in a groove too?

A. Well, I can not say in regard to this in particular; I say that around here, in America, put in a groove, they roll them in a groove and roll them in that form on a straight scythe.

GEORGE H. BILLINGS, a witness on behalf of the plaintiff, testified that he had been in the manufacture of iron and steel in the city of Boston for thirty years, and that he was acquainted with the articles such as
17 these before him, and that he was acquainted in a general way with the process of producing similar articles, and that he considered himself an expert in stating the process by which they were made; and testified as follows:

Q. State the process by which those several articles are made. Generally speaking, is it a forging or not a forging process?

A. Forging.

Cross-examination:

Q. (By Mr. ALLEN.) Do you deal in these articles?

A. No, sir.

Q. You never have dealt in these articles?

A. No, sir; never dealt in them only as a manufacturer.

Q. Have you manufactured these articles?

A. No, sir; manufactured the steel from which they were made.

Q. Are you familiar with the process of making them?

A. In a general way; simply as forging; there are but two ways in which they can be made, one by casting and one by forging, and they are distinctly not a casting, but are forged.

Q. Oh; that is your opinion?

A. No, sir; it is my knowledge.

Q. What is that knowledge based upon?

A. Upon the impossibility of this being a casting.

Q. Have you any acquaintance with the manner of making them?

A. Yes, sir.

Q. What is the acquaintance?

A. My acquaintance in a general way; we have furnished the steel for manufacturing, and have had them returned in some measure, because the steel in some instances was defective. I have seen such things returned forged.

Q. You do not answer my question whether you have ever seen any of them made?

A. I have not.

Q. Do you know what term the trade applies to these?

A. Generally grass hooks; we furnish steel for them.

Q. That is a grass hook, now?

A. I should call it a forged grass hook.

Q. You say it is forged grass hook?

A. Yes, sir.

Q. Not a grass hook?

A. Yes; but a forged one, not a cast one.

Q. In other words, that it is not known to the trade as a forging alone, is it?

A. I am not familiar with what they are known in the trade; I do not know what they are classified in the appraiser's book for; I only know it is a forging.

Q. That is, it is a grass hook produced, as you say, by forging?

A. Yes, sir.

Q. Is there no rolling along with it?

A. That I have not seen and do not know; I should say not, from that; here is an indication of hammering there.

Q. Is there any indication of rolling?

A. No, sir; no indication of rolling that I can see; still, I can not tell from examination except by removing the oxide so as to see the flow of the metal.

Q. Unless the oxide was removed so as to show the flow of the metal it would be difficult to determine?

A. There might be a deception and have it rolled; so as to deceive my judgment of the matter.

Q. So, whether it has been rolled at all can not be determined with the naked eye?

18 A. It is rather defective light; my judgment that has been hammered wholly.

Q. Can you say as a matter of fact, from an examination that you can make here, that this had not been rolled at all (the scythe)?

A. What do you mean by rolling? There are several ways.

Q. I want to know from you; I want to learn the business.

A. I will tell you what we term the rolling process in a rolling mill is by passing the hot metal through a roll. Now, it would be impossible to produce that thing by rolling it in a rolling mill.

Q. Now, there is another way of rolling, isn't there?

A. What is it?

Q. I ask you if there is?

A. You said there was.

Q. Is there any other way of rolling?

A. Well, you can roll a ball sufficiently round; but there is no way of producing such a thing as that in what is known as a rolling mill.

Q. Is there any system of rolling through which that may have gone?

A. No, sir; I can conceive of none to produce such an article as that.

Q. Any portion of it; not to produce any portion of it at all? You have not told anything about these articles.

A. No, sir.

Q. Do you know what that is known in the trade as?

A. I should say that is known as a forged pincer.

Q. That is the same?

A. Supposed to be.

Q. How is that made there; is there any welding to that?

A. Well, there is a possibility of its indicating welding; there is no evidence of welding here; it can be made from iron; can be made of all steel.

Q. Is there any welding about this?

A. There is no evidence of it.

Q. Can you tell from an examination of it?

A. Not by the eye; as I remarked before, the scale would have to be removed so you could see the union of the two metals.

Q. And that remark would apply to the rolling as well as the metal?

A. No, sir; it would not, because the——

Q. You hear pretty well, don't you?

A. Yes, fairly well.

Q. When you spoke of rolling I understood you to say unless this oxide is removed you could not see distinctly whether the metal had flowed together; is that it?

A. Well, I do not think you understood me; when you spoke of welding I said it would be necessary to remove the oxide so I could see the union of the two metals.

Q. Wouldn't it also be necessary to remove the oxide to state with certainty whether this is rolled or not?

A. No, sir; it would not. It is an entirely different thing.

Q. What did you say your business was?

A. I have followed the manufacturing of iron and steel; I have been general superintendent of the Norway Steel and Iron Works for the last six years, until they went out of business.

Q. What is your business now?

A. Now manufacturing steel shafting and deal in forgings.

Q. What kind of forgings?

A. We have forgings, rough forgings, and forgings partly finished.

Q. What kind are you dealing in?

A. Forgings for shafting.

19 Q. What shape?

A. Generally in a round shape, any dimensions that might be asked for for the purposes of finishing up shafting, giving power to machinery.

Q. That is, either iron or steel in a forged shape?

A. Yes, sir; either.

Q. Either iron or steel in a forged shape?

A. Yes, sir.

Q. It may be devoted to some process of manufacture?

A. No, sir; I give it——

Q. To the specific manufacture of shafting?

A. Yes, sir; I finish shafting myself.

Q. Sell it, and also deal in forged manufacture; the forging' when made into shafting are called forged shafting?

A. Forgings sometimes; shaftings are sometimes forgings.

Q. The raw material', or material from which the shaftings are made, are called forgings, are they?

A. Yes, sir, after they are drawn a certain size; generally when beyond the rolling size.

Q. And from these forgings you make your shafting, do you; that is your business?

A. No, sir; I do not. Yes, I do, too, but my immediate business right there is not that, but I get the forgings either rough or partly finished as forgings, or as rough forgings, or as forgings rough turned—that, is partly finished, and then finish them to the size desired and put them on the market as finished shaftings.

Q. (By Mr. STETSON.) Are these, or not, forgings?

A. I should say they are forgings.

Q. (By Mr. ALLEN.) That is, they are forged sickles and scythes, aren't they?

A. Forged sickles, forged scythes, and forged pincers.

Q. They are rather different shape from forgings out of which you make castings?

A. Yes, sir.

Q. (By Mr. STETSON.) These castings are in different shapes from each other?

A. Yes, sir.

Q. Do you know any particular length or size a forging has to be?

A. No, sir; a forging it simply a mass of metal brought to a desired shape.

Q. (By Mr. ALLEN.) These are in rather a more finished shape than forgings?

A. Well, we have forgings which are turned all over, what you call forgings rough turned.

Q. These are more finished?

A. I should think not more than a forging rough turned.

Q. Well, that forging rough turned is what is turned through a machine?

A. No, sir; partly turned so as to move in an axis of the metal.

Q. Put into a lathe?

A. Put into a lathe and partly turned by the forge people themselv es

SAMUEL H. BROWN, a witness called on behalf of the plaintiff, testified that he resided in East Boston, and that his business was a forger of iron and steel, and he testified as follows:

Q. (By Mr. COMSTOCK.) Will you please look at the articles now exhibited to you and state from your experience and observation by what process these articles have been produced other than the wooden handle?

A. I should say that each article here shown is a forging.

Q. Is there any doubt on that point?

20 A. No, sir; not in my mind.

Q. Now, referring to all of the articles that are exhibited, except the grass hook, that is polished and has a handle, referring to all of the other articles, I ask you whether they are at present in a condition in which they are ordinarily used by the users?

A. (Witness having pincers in his hands.) They are not. I will answer the question in this way; they are not in a condition that I can get consumers to accept them from me as finished.

Q. In your business?

A. In my business.

Q. So far as you put such articles out, they would require further work?

A. Yes, sir.

Q. What further work?

A. Well, polishing and grinding.

Q. Is that so of all of them?

A. Yes, sir.

Q. The grass hooks and scythe would need to have substantially the same process to bring them into the condition with that which I now show you?

A. Yes, sir.

Q. And the pincers also would require polishing and grinding?

A. Yes, sir.

Cross-examination:

Q. (By Mr. ALLEN.) Isn't it true that sometimes the grass-hook, instead of being put into this glittering condition, is painted along here and just ground a little?

A. Well, when we paint them or give them this color, there are two or three lacquers; but before these lacquers are put on it is the custom to polish them up something like that, and then put these lacquers over the polish to keep them from rusting.

Q. Do you polish them to such an extent where you put the lacquer or color on?

A. Yes, sir; we do not give them a very high finish; we do where we do not; but we give them a very good finish.

Q. You have dealt in these articles?

A. I have not dealt in them, but have made them to some extent.

Q. Taking this scythe at first, what would you say to its being a forging; is it a forging in a commercial sense, a completed article?

A. It might possibly be.

Q. Well, is it generally?

A. Not generally.

Q. Not generally?

A. No, sir.

Q. That is, it is in a condition, from which, by further process, something is developed into a manufactured article?

A. In certain instances it does.

Q. Generally?

A. Well, I am not prepared to say that there is generally, because there is a great many instances where forgings are merchantable; that is, they are finished when they leave the forge.

Q. Such forgings as what?

A. Well, I might mention what is called the jewelry die forging, for one thing; that I make myself.

Q. What is that?

A. It is a steel forging.

Q. What shape is it in?

A. Well, it is octagon in shape, and conical.

Q. What is it made for, this forging?

A. For use for handling, for shaping jewelry.

Q. Now, take this, when you would make this you would take
21 a piece of metal, would you?

A. Yes, sir.

Q. And then how would you bend it?

A. Well, I am prepared to say that in making these forgings of this description, this and that, there are two methods of making them. One method is to forge them by hand; the other method is to forge them with trip hammers.

Q. How are these forged?

A. Well, I should judge that these were forged by trip hammers, from the appearance of them, and that the processes are quite different, and they are both forgings.

Q. How does this get the curved shape?

A. We should forge by a trip hammer; you first forge a piece of metal, which would be in a sectional view edgewise, would be the shape of a wedge the whole length. Then after that is forged they forge the back right on the back side of that wedge and that gives these turns to the tool; that is in trip-hammer forging, while in forging with a hand hammer, the ordinary hand-hammer forging, the operator bends the metal before he commences to draw the blade.

Q. What do you mean by drawing the blade?

A. Drawing this shape.

Q. How is that done?

A. It is done on a tool with a hand hammer and on a die with a trip hammer.

Q. Have both these processes got to be used in order to get that into that shape?

A. Well, we can forge a tool of this kind by either process.

Q. By either process entirely?

A. Yes, sir; one is swifter than the other.

Q. What is the material from which this comes; what is the classification of the article?

A. It is called bar steel.

Q. And then after it comes into that shape what do you call it in the language of trade?

A. In the language of forging we would call it a sickle forging.

Q. That is, in plain American that is a sickle?

A. No, sir, a forging; would call it a sickle forging.

Q. Name in trade?

A. I do not know about that.

Q. What is that in trade, do you know?

A. Well, we should call——

Q. I mean generally in trade; that you naturally, as you yourself call it?

A. Well, called pincers; that is all I know.

Q. Generally in trade, what would that be called?

A. A scythe forging.

Q. As a rule, then, do I understand you to say that forgings of iron and steel are not a product in a finished state; I mean simply as forgings?

A. There are a good many instances where they might be finished products.

Q. I mean generally?

A. Not generally.

Q. Suppose I should buy one of these in this shape and put a handle on, what would it cost me to have it sharpened for use (referring to scythe)?

A. If it were properly sharpened for use it would probably cost you 50 cents.

Q. That would be a single one?

A. Yes, sir.

Q. How would you generally estimate the cost of them, by weight or by number?

A. By number.

Q. What would the cost be per 100?

A. Probably a manufacturer would sharpen them in quantities for 10 cents each.

Q. How about these (sickles)?

22 A. These could undoubtedly be done for less than that.

Q. Four or five cents?

A. I should think five or six cents each.

Q. Well, after this is sharpened, with a handle on, that is, sharpened properly, it is all ready for use, isn't it, that is, tempered?

A. Yes, sir; well, after it is sharpened properly and polished, it needs to be polished, the polishing would have something to do with the sharpening.

Q. Does the polishing up here have anything to do with the sharpening?

A. Yes, sir; when the knife is worked through the grass, in that way, the grass, when it is nicely polished, passes off from the blade, slips from it in a much better motion than it does when the forging is rough, so near the edge of the blade.

Q. It works easier?

A. Yes, sir.

Q. You have seen them used when they were not polished way up here?

A. I have never seen them.

Q. You do not know whether they are or are not?

A. No, sir.

Redirect:

Q. (By Mr. STETSON.) You spoke of certain articles, forgings, being ready for use immediately?

A. Yes, sir.

Q. I will ask you if you know anything about the wrenches that are made fit for use by forging simply?

A. Yes, sir.

Q. By the forging process?

A. Yes sir.

Q. And these with edge—I show you a picture?

A. Yes, sir.

Q. Are you acquainted with such articles as these being forged and sold ready for use?

(Catalogue of Peter A. Frasse & Co., machinists and supplies, 95 & 97 Fulton st., N. Y., put in and marked "A—C. R. B.")

Q. I show you other articles under the head of "Special Forgings;" have you seen such as these in use and completed by forging?

A. I have seen articles such as these.

Q. Completed by forging?

A. Yes, sir.

Q. And without anything further done, and known as forgings in the trade?

A. Yes, sir; there are articles there that are known as completed forgings.

Q. I mean that you have known?

A. There is a hook right there.

Q. From your experience in the business would you understand this as being a forging, such articles as these?

A. Yes, sir; these wrenches here (the witness marks the ones to which he refers).

Q. Are there no articles on that page which you exclude as forgings?

A. Yes, sir.

Q. Which?

A. All these.

Q. Mark out all you would exclude as far as your experience goes everything that you understand to be a forging though not a complete condition. (The witness did so.) You have drawn a pencil mark, have you, on page 25 of Special Forgings, that in your experience you would know to be forgings, although not a completed condition?

A. Yes, sir.

(Catalogue put in and marked "B. C. E. B.")

23 Re-cross:

Q. (By Mr. ALLEN.) Now, you have marked these there, how are these known to the trade; I do not mean factory men, but to the trade; what are they called?

A. I should judge that they were called plyers.

Q. What are these down there, under the plyers?

A. Small key forging.

Q. What are these called, down through there?

A. Those are boxes.

Q. Suppose I should come into your place and you should have some of these things, and I should say I wanted a steel forging, what would you give me?

A. I should ask you for a description of the steel forging that you wished made.

Mr. STETSON. If the court please, that is our case.

WILLIAM E. WOOD, on behalf the Government, testified that he was a manufacturer of iron tools in the firm of William T. Wood & Co., and dealer in agricultural implements, wooden ware, &c., in the firm of Walker & Wood, in Boston, with a factory in Arlington, and had been in the business since he was 19 years old, and further testified as follows:

Q. Are you familiar with what are properly termed forgings of iron and steel.

A. We make forgings in our business; familiar to that extent.

Q. Now, will you state when a forging, as a forging, ceases, if at all, to be commercially known as a forging and becomes something else?

Mr. STETSON. I object; it is immaterial and irrelevant.

NELSON, J. I will rule that you may show that these articles are termed forgings, and whatever they may be, that you may prove.

Q. Take this article; I won't designate it; after that has been forged by hand, tempered, and ground, sharpened some, by what name would it be designated in trade or commerce?

A. That would be called an incomplete grass hook, I should say.

Q. Now, if it had been forged by hand and had been tempered and ground, when in the process, if at all, did it cease to be a forging?

(Question objected to and exception taken by the pl'tiffs.)

A. I should say that that was a forging when it left the forger's hands; when it left the hands of the forger.

Q. After it had been tempered does it cease to be a forging, in a commercial sense—tempered and ground?

A. It would be in a manufacturing sense; it has then gone beyond the point of being simply a forging.

Q. It is then developed into what, in that specific case?

A. It is partially developed into a grass hook, if this is a grass hook; that is a very wide grass hook, but I presume that is what it is.

Q. Now, if these pincers, which I shall show you, had been forged by hand and the piece of steel had been welded into the jaws, and it had been riveted together, whether or no it has ceased to be a forging or not?

24 (Same objection and exception saved.)

A. My statement would be that the riveting it together would carry it beyond the point of being simply a forging in so far as riveting together. I make no reference to the finish on here.

Q. And how about the welding of steel into it?

A. That would come under the head of forging.

Mr. STETSON. I will state as many times as desired that these are known to the trade as pincers, grass hooks, and scythes.

Q. Now the same question, Mr. Wood, as to this scythe; when, if at all, did that cease, in a trade sense, to be a forging, assuming that it was forged by hand and assuming that it had been tempered and ground a little?

(Same objection and exception saved.)

NELSON, J. The tempering was by forging, I understand the evidence to be.

The WITNESS. My answer would be, that ceases to be a forging when it leaves the hands of the forger; that any further work upon it is in the nature of completing the finished article.

Q. What do you mean by leaving the hands of the forger; won't you state fully to us what you mean by that, so that the jury may all get your thought?

A. We call the man who stands behind the anvil and hammers the work, whether he have a helper to work with him or not, a forger; when he throws down his work the forging is finished.

Q. Well, that work is done; it is by a hammer?

A. Not being a scythe-maker, I could not say definitely; but that has been hammered, in my judgment.

Q. Whether, in your judgment, it has been made entirely by hammering; I mean, outside of the things I have called your attention to?

A. This, in its present state, has had more work done to it than hammering, probably, in its present state; but it has been through some system of forging, I should say.

Q. What other work has been done to it, Mr. Wood, in its present state, that is what we want to get at?

A. There has been a little grinding done on the edge of it; I am unable to determine whether this surface—I do not think this surface has been polished the same as this article has. I do not fully understand the finish on the surface of that making it so smooth. It may be what is called "cold hammering, possibly rolling." I do not pretend to be an expert on the manufacture of scythes.

Q. The tempering?

A. Inasmuch as no color is visible, it is impossible to tell whether it is tempered or not, except by testing.

Q. The testimony, decidedly, was it had been tempered. That is done now?

A. Tempering is done by heating it to a certain heat and plunging into a bath, either water or some chemical solution, in order to harden it. Then the process is finished by drawing the temper out to a certain point which is ready to hold the edge.

Q. How is that point determined?

A. That point is usually determined by the color of the metal; there are other means, but that is the usual method.

Q. Whether or no, on examination of that grass hook, you could state that that has been entirely forged?

Mr. STETSON. Well, I am very much pleased with his testimony; he has just stated that he is not an expert upon scythes, whether
25 he is upon grass hooks I do not know. I will take his word for it at once, but I think before you ask the question you should ascertain. Whatever he says I will accept, of course.

The WITNESS. I will state I am not a manufacturer of scythes; I manufacture different tools. These are somewhat similar, and yet there are processes used upon these scythes which I do not use upon our edge tools. This, for instance, I know is not as it left the forger's hands; that I know, but exactly what has been done since then to put this back finish on I can not say, except this edge.

Q. That has been done, you know, by hammering, I suppose?

A. No, sir; either by an emery-wheel or a grindstone; probably an emery-wheel.

Q. And I understand you to say you know this is not as it left the forger's hands?

A. I can swear to that, sir.

Cross-examination:

Q. (By Mr. STETSON.) Is it uncommon for a forger himself to temper the steel that he is working?

A. In our business it is.

Q. It is uncommon?

A. Uncommon.

Q. You do not know whether it is ever done or not, do you?

A. In very small businesses I have known a forger to do his own tempering, but in the business the manufacturers usually have a temperer.

Q. Did you hear the testimony the other day that these articles were not made in large manufactories, but were made in small shops in Germany?

A. I did not.

Q. In small business the habit is for the forger to temper and hammer out?

A. I did not say it was the habit, sir, but have known it to be done.

Q. Do you know whether it is a fact that if, in the course of tempering, a blister is developed in the blade, it is necessary for the forger again to take the blade and beat it back to reduce the blister or defective spot?

A. If a defect shows in the tempering in the manufacture of our scythes the work goes back to the forger to be corrected.

Q. So that it is not certain with reference to any piece of cutlery that the forger's work is done because it has passed over to be tempered?

A. I should say if it was properly done it would be the end of the forging when he got through with it.

Q. But does it not often happen that something in the metal itself is developed in the case of tempering?

A. If the steel is imperfect, so that a water crack is developed on a tool of this kind, I should suppose it would spoil the tool utterly. The forger can do nothing more with it.

Q. Now, to come back for a moment with reference to the general distinctions of forgings. Have you seen any such implements as any of these made of cast steel?

A. Of cast steel forged, do I understand?

Q. As castings?

A. As castings left in that condition—I am not familiar with pincers; I do not sell them.

Q. But do you know of articles in your trade, some of which are made of forging or of casting?

A. Yes, sir.

26 Q. For instance, I will go further. Now, there is a horseshoe; are not horseshoes sometimes cast and sometimes forged?

A. I can not answer that.

Q. I show you a catalogue of T. H. Williams & Co., and another of Peter A. Frasse & Co., and ask if the articles there shown to you on pages 25 and 28 would come within your knowledge of forgings?

A. I can not determine by looking at a cut, but they may have been partially finished.

Q. I mean such articles as these; would you, or not, have a knowledge of such articles known as forgings?

A. I should say that these might be forgings.

Q. And that heading there, "Special forgings," would not indicate to you a misnomer, would it?

A. It would not; it is possible it would be very difficult to make these square.

Q. Whether the title would indicate to you any misstatement on the part of the manufacturer issuing his catalogue?

A. I should say that this could not be, possibly, a forging.

Q. I would like to hear why.

A. This light coloring indicates a finish; why this is represented so I do not know, but it looks like a finish.

Q. Suppose there is a finish and square edge, would there be anything to indicate to you that that was not a forging, as stated?

A. Nothing that I see there, sir.

Q. And your dissent applies solely to the indication of finish and squareness of the edge?

A. That is all.

Redirect:

Q. (By Mr. ALLEN.) Are you able to tell, Mr. Witness, with any accuracy at all, from a cut of this kind, whether the article represented there is, or is not, a forging pure and simple?

A. I could not tell from a cut.

Q. If something has been done to these articles, there represented beyond the hammer of the forger, whether or no they would cease to be forgings?

A. We should not call them strictly forgings then on account of the extra work.

Q. Whether that extra work has been done in these cases you can not determine from the cut?

A. No, sir; I can not determine.

Q. Can anybody from these?

A. I think not.

Q. (By Mr. STETSON.) In the trade it is customary to issue catalogues, is it not generally?

A. It is very common.

Q. And these seem to you to be the ordinary catalogues of manufacture?

A. Yes, sir.

Q. And all these articles there seem to be designated as forgings in the ordinary trade catalogue?

A. They are so marked.

Q. (By Mr. ALLEN.) Did you ever deal in them yourself as forgings?

A. Not as forgings.

Q. You have known them hav'n't you?

A. Yes, sir.

Q. By what terms?

A. As repairs for different machinery.

Q. (By Mr. STETSON.) Repairs for different machinery?

A. Yes, sir.

Q. You would not call any of these articles repairs for different machinery, would you?

A. Respecting these I can not tell. I do not think I fully understood your question.

27 Q. I say none of these articles we have in suit would come under the head of repairs to machinery?

A. No, sir.

Q. (By Mr. ALLEN.) None of these articles before you would come under the head of forgings, would they, pure and simple?

A. Nothing here that I should call strictly forgings.

Q. (By Mr. STETSON.) Did I understand you to say that every one of them was the result of the forging process with some other process added to it?

A. Those upon which I testified were so. I should say that every one of these have been forged in some way.

JOSEPH WILLIAMS testified that he had been in the hardware business for 41 years; that he had always dealt in grass hooks; scythes done very little with, and further testified as follows:

Q. Now, will you look at this grass hook, Mr. Williams, and state whether that is or not a partly manufactured article?

A. I should call it a partly manufactured article; it seems to be ground and all that it needs is a handle in it to make it merchantable. I should say if it was better polished it would be a thing that is merchantable with a handle in it.

Q. Are you able to tell what it would cost to polish a thing of that kind?

A. No, sir; nor correctly; I never had occasion to have any work of that kind done.

Q. Are you familiar with that [referring to pincers]?

A. Yes, sir.

Q. What is that?

A. That is what we call a carpenter's pincers.

Q. Whether that is an article ready for the trade or not, in what shape is it?

A. All the difference I can see, we should polish all that surface there. That is all the difference; the way we receive them to sell.

Q. Are you able to tell what is done to these pincers as you see them before you, besides the hammering process?

A. There is, usually; this would be polished; this surface here would be polished.

Q. I mean what is done to this identical thing, just as it is, besides the hammering process; as it now exists what has been done to put it in its present shape besides hammering?

A. All riveted together, I should say.

Q. Are you able to state whether there is any welding done here?

A. I should say there was; I should say there had been some steel inserted; I should say so.

Q. When, if you know, does an article in trade parlance cease to be a forging and become a manufactured article?

A. Well, I can not say, as when we receive it in our store in good condition we call it a merchantable article. I could not say what particular point. I might give my opinion on it; all I am familiar with is buying and selling. We receive them in a complete condition from the manufacturer.

Q. Are you not familiar, then, with the manufacture?

A. Not at all, sir.

Q. Take this scythe here; has anything been done to that besides hammering or forging that you can state; if so, what?

A. I should say it had been tempered.

28 Q. Yes; and what else?

A. I do not think it has been ground; it is drawn down very thin, but I do not think it has been ground. I should say that was all.

Q. Is there anything about the thing itself which would indicate that it had been through any other process besides tempering and hammering? Is it brought into that shape by tempering and hammering alone, should you say?

A. I should think so; yes, sir.

Q. Do you know what the expense, if any, would be in putting that in polish for the trade; the expense per hundred?

A. No, sir.

Q. Do you know anything about that any more than the other?

A. No, sir.

Q. When you receive these articles here, such as are before you in trade, Mr. Williams, whether or no, you know them as forgings, or how they are designated?

A. We know them as scythes and grass hooks, and carpenter's pincers.

Mr. STETSON. I am much obliged to you, Mr. Williams; I do not wish to ask you any questions.

HIRAM G. JANVERIN testified that he had been a dealer in hardware for twenty-three years in Boston, and further testified as follows:

Q. Will you examine these articles before you, and state how they are known to the trade?

Mr. STETSON. Are you going to prove that they are known as anything different from grass hooks, sickles, and scythes? If he has got any different meaning, of course, I will take it, but these are known in trade as sickles, scythes, and carpenter's pincers; we concede that.

Q. Are you aware of any article of merchandise that is a complete article that is known as a forging, simply known to the trade as forging simply?

A. No, sir; I do not think of any at present.

Q. Well, whether or no, that general answer would apply to such a thing as a horseshoe nail?

A. Might apply to these articles.

Q. Or a rough piece of shafting?

A. I should say not.

Q. Something would have to be done to put it into the shape of shafting, which would take it out of the term "rough forging?"

A. Take it out of the rough state.

Q. Are you able to state from an examination of these articles as to what work has been done on them, Mr. Janverin?

A. Well, my opinion would not be that of an expert in this kind of business. I can only give my opinion, that is of no more value than that of any other man who knows nothing about forging.

Mr. ALLEN. Then I won't ask it; that is all.

Mr. STETSON. I have no question. You are too fair a man to play with.

ALBERT B. STEARNS testified that he was and had been United States appraiser for five years or thereabouts here in Boston, and had been
29 in the manufacturing of iron business, sometimes that and sometimes salesman in a cutlery establishment: hardware store that he appraised the articles of which these are samples, according as he read the law, and further testified as follows:

Q. State, if you can, what is known commercially or in trade parlance as forgings of iron and steel.

A. In steel that has been hammered or possibly rolled--mostly hammered. Sometimes they may forge a steel, as I understand it, and practically work—a rolling process may be, in a sense, a forging; but generally, according to rules of the foundry, a hammering process. Usual term of forging, whatever article has been hammered and brought to a certain stage; it may be incomplete; it may be complete; but a certain stage of hammering, and when it is left, as it often is, in most cases, it is

left for a further process before it becomes a finished article in this work. As far as these are concerned, when I was a young man I was in this trade; that is, to a certain extent; that is, I was employed by a cutlery firm, and also a firm which manufactured scythes and grass hooks and also some of these articles, and I know that in making these goods there was a process to be undergone subsequent to the process of forging. That is what we termed it in our shops.

Q. Take that article (a scythe) and explain what process, if any, besides hammering.

A. That has undergone, I should say, a process of tempering, which is done by a person other than the forger, usually. Of course, a blacksmith oftentimes will temper his goods—perhaps these articles were tempered some—as a broadsword, which has to have a special person for that work.

Q. Why?

A. Because he must be more skillful than the ordinary man that uses the hammer. There are several classifications of tempering—five or six.

Q. That is, more skillful than the ordinary forger?

A. Yes; he has to have a special adaptation for that work; but a forging, in the usual sense, is an article which is ductile under the hammer, and this article has lost its ductility. It can not be forged again until it has been through a process of heat and rehammered and brought to a different thing by a forger.

Q. So that article there is of no value; practically of no value except for a scythe, is it?

A. Not at all; because to be manufactured into anything else the temper has got to be reformed.

Q. Is that of no value as a forging in its present shape?

A. No, sir; that is all ready to put a handle on. That is brought into this country in this way, because, I understand, wood is much cheaper in this country than in Germany, and the handle may be put on a great deal cheaper.

(The court ruled, upon objection, that the latter part of the answer was irresponsive and might be stricken out.)

Q. Why is that usually brought into this country in this shape, if you know, you may state?

A. I understand they are brought in here because wood is cheaper and handles can be put on here at less expense. That is my understanding of it. I may be in error, but I am certainly not in error as to the cost of wood in this country compared with those of old monarchical countries. They are pretty bare of it.

Q. Is this the way in which this class of goods are imported?

30 A. These parties, I believe, have made it a point of importing goods in this style in this stage.

Q. Did you state as to this grass hook what has been done to it besides hammering?

A. That has been tempered and ground. I think that has been put into a roll also, to groove it to a certain stage of pointing. I do not think that can be done so perfectly without further process.

Q. You do not think what can be done?

A. I do not think this can be done so perfectly as it is without it passed through some other process than hammering. This handle here or haft, as you call it, is still left ductile; that is, not tempered.

Q. What do you call it?

A. The haft, the tang, or bend that goes into the handle.

Q. Now, take these pincers?

A. Certainly, been on the polishing wheel. This has been carried to a further extent than is known as forging; it has been put on a wheel and been filed, and also on a grindstone; without any question that has been tempered through here.

Q. Of what, generally, if you are able to state, do forgings of iron and steel consist?

A. Consist of any article in the rough, usually; there are articles that are known as complete forgings.

Q. Such as what?

A. Such as steel for shafting, and there are horseshoes and horseshoe nails, and there are such things as staples, ordinary rough goods, and hooks that maybe any blacksmith is able to make by the hammering process complete.

Q. These are completed articles, completed by the hammering process; anything else done?

A. Yes, sir.

Q. When anything else is done to them what happens as to their classification in trade parlance?

A. Their character is changed with change of commercial designation is what we are governed by in many instances.

ROBERT FARQUHAR testified that he was a merchant and dealer in horticultural and agricultural tools, had been in business on his own account for seven years and in the business since he was fourteen years of age, further testified as follows:

Q. You have bought and sold such articles as these, haven't you?

A. Yes, sir; not in that condition.

Q. In that condition what are they known as in the trade?

A. This would be a partly manufactured scythe and that would be a partly manufactured grass hook.

Q. As to the pincers, are you familiar with them?

A. No, sir.

Q. Would the scythe and the grass hook as you have seen them there, in the condition there, be known in the trade as a forging of iron and steel, by that name?

A. No, sir.

(Cross-examination waived.)

ERRIC H. WHITTEMORE, being sworn, testified that he had been in the hardware business ten years, and further testified as follows:

Q. Have you dealt in articles similar to those before you?

31 A. Nothing like that thing.

Q. Have you dealt in scythes?

A. Yes, sir.

Q. Have you dealt in grass hook?

A. Finished.

Q. Dealt in pincers?

A. Yes, sir.

Q. How would these artitles be designated in trade parlance, if you are able to state?

A. Well, I don't know. I don't know what you call it. You can't sell that in the shape it is in.

Q. What is it in the shape it is in?

A. It is forging, I should say. I don't know what kind.

Q. You don't know by what process?

A. Well, it is forged, I should say. I don't know.

Q. Has it been ground any?

A. I should say that it had, although I am not positive.

Q. Has it been tempered?

A. I can't say as to that.

Q. How would this be designated, if you are able to state, in trade parlance, or this either?

A. In the shape they are in now?

Q. In the shape they are in now; yes, sir. Are you able to state from your knowledge?

A. Never dealt in anything like that, in an unfinished state like that.

Q. So you are not able to state how they are designated in trade?

A. Not such articles as these.

Q. Have you dealt in articles like this?

A. Yes, sir.

Q. How are these designated in trade?

A. Carpenters' pincers.

Q. You have dealt in those?

A. Yes, sir; similar to that.

(Cross-examination waived.)

FRANCIS WINTHROP DEAN testified that he had been a mechanical engineer and designed steam engines, locomotives, boilers, railway machinery since 1870, and was a graduate of the Lawrence Scientific School, Cambridge, and further testified as follows:

Q. Can you state to the jury what are known as forgings of iron and steel?

A. My idea from my experience is that when you say that a thing is a forging that the idea conveyed is something that is not finished, which is not finished for the purpose for which it is made, although many things are used just as they come from the forge; for instance, as the witness has stated, staples. I would say in my line braces for boilers, for instance.

Q. Are used just as they come from the forge?

A. Yes, sir.

Q. Now are you able to state whether these articles are in the condition that they would be in just having come from the forge alone; these two articles and pincers?

A. I think this (sickle) is, and possibly the edge has been ground a little; otherwise than that I should say they were.

Q. Have they been tempered?

A. They look to me as if they had been.

Mr. STETSON. We say they have been. There is no dispute about that.

Q. Would these be able to be used as forgings of iron and steel as such, or would there be the use for which they appear to be designated?

A. Well, I think a little more work would possibly be put on them in general, they would have to be sharpened, these grass hooks, but I
32 should say it would be more a matter of taste than anything else; if a dealer wanted to make them more attractive to a purchaser he would grind them, but they would serve their purpose without any other work than grinding.

Q. Can they be used as forgings alone simply in their present shape, or would they have to go through any other process?

A. I suppose them to be tempered now?

Q. Yes, sir.

A. Well, I should not call them forgings; I should say they were scythes or sickles; I should not call them forgings unless I wanted to convey the idea to somebody of the process by which they were made.

Q. What is the process by which these pincers are made, if you are able to state?

A. It is made by forging.

Q. And then comes other labor, I suppose?

A. Well, a little additional labor put on it.

Q. These must have had some labor besides forging?

A. Yes; putting together at last.

Q. How was that made; are you able to state from an examination of it [scythe]?

A. I should say that was forged.

Q. Anything else? I refer to the tempering, to the sharpening, to anything else that may have been done to it.

A. I do not see that anything else has been done, unless, possibly, the edge has been ground a little. I say so; it looks like it.

Mr. ALLEN. It is conceded that they have been tempered.

Mr. STETSON. Yes, sir.

Q. Now, whether or no, Mr. Witness, all things that are produced by the process of forging may not at some stage be termed forgings?

A. Yes, sir.

Q. When do they cease to be forgings?

(Same objection, and exception saved by the plaintiffs.)

A. They cease to be forgings when they are in that state in which they are used for the purpose for which they they were intended.

Q. That is when they are put into a condition, did I understand you, for some specific purpose or use?

(Same objection, and exception saved.)

A. Yes, sir.

Q. Then all such thing made by the process of forging would they continue to be called forgings in all stages of their completeness?

(Same objection, and exception saved.)

A. When they were in a final condition which they were to have for practical use, they would not be called forgings, in general, unless, as I said before, you wanted to convey the idea of the process by which they were made. It would be in the nature of an exceptional remark.

Q. That is, that use indicated how they were made?

A. Yes, sir.

Q. But in the trade they would be designated by the name which term applied to their shape?

A. Yes, sir; and in that connection Mr. Radfield, of Sheffield, made razors right from steel castings without a particle of work on them. He simply ground them; never received a hammer or any kind of pressure whatever. He has taken the steel casting and simply ground it and put a shaft with it.

(Cross-examination waived.)

33 At the close of the evidence the defendant's attorney requested the court to make the following rulings of law under the tariff act of 1883, Schedule C (22 U. S. Sts., 501):

"The term 'forging' is used to designate what are commercially known in trade as 'forgings.' The word was not used to designate every article produced by the process of forging not otherwise specially designated."

The defendant's attorney also requested the court to submit to the jury whether the articles imported by the plaintiff were known to the trade in a commercial sense as forgings of iron and steel, and whether, upon the evidence, the articles are forgings in the meaning of the special clause of the tariff act.

The court refused to rule as above requested and refused to submit to the jury the above questions of fact; but did rule that the language of the special clause "is broad enough to cover any article that is made with substantial completeness by the process of forging;" but of all such refusals, both to rule and to submit, and to each ruling, the attorney for the defendant then and there excepted, and thereupon the court directed the jury to bring a verdict for the plaintiff for $104.35 with interest, which was the amount the parties agreed the plaintiffs were entitled to recover, if anything.

Examined, found to be correct, and allowed.

THOS. L. NELSON, *D. J.*

It is thereupon considered by the court, to wit, April 7, A. D. 1891, the honorable Thomas L. Nelson, district judge, sitting, that the said Weibusch & Hilger, limited, plaintiff, recover of the said Leverett Saltonstall, collector, defendant, the sum of one hundred and nine dollars and fifty-one cents damages, and its costs of suit taxed at one hundred and nineteen dollars and eighty-five cents.

A true record.

Attest: JOHN G. STETSON,
Clerk.

The following is the assignment of errors filed by the defendant to be transmitted with the record:

Assignment of errors and prayer for reversal.—(*Filed April* 1, 1891.)

And the defendant assigns the following errors in the above-entitled cause and prays that judgment be reversed:

That the court ruled upon the facts as shown in evidence that the action could be maintained and ordered judgment for the plaintiff, whereas the court should have ruled that the action could not be maintained and should have ordered judgment for the defendant.

34 And further that the court refused to rule as requested by the defendant as follows: "The term 'forging' is used to designate what are commercially known in trade as 'forgings.'" The word was not used to designate every article produced by the process of forging not otherwise specially designated, whereas the court should have given said ruling as requested.

And further, that the court refused, as requested by the defendant, to "submit to the jury whether the articles imported by the plaintiffs were known to the trade in a commercial sense as forgings of iron and steel, and whether, upon the evidence, the articles are forgings in the meaning of the special clause of the tariff act of 1883, Schedule C, whereas the court have submitted both of said questions to the jury, as requested.

By FRANK D. ALLEN,
U. S. Dist. Attorney.

35 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record of said circuit court in the cause entitled, "No. 3311, law docket; Weibusch & Hilger, Limited, plaintiff, v. Leverett Saltonstall, defendant," lately determined in said circuit court, and of all proceedings therein, and of the assignment of errors and prayer for reversal filed therein.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court at Boston in said district, this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.] JOHN G. STETSON, *Clerk.*

36 The United States of America to Weibusch & Hilger, Limited, a corporation duly organized according to the laws of the State of New York, and having its usual place of business in the city, county, and State of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the fifth day of May next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States within and for the district of Massachusetts, wherein Leverett Saltonstall, collector of customs for the revenue district of Boston and Charlestown, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas L. Nelson, district judge of the United States for the district of Massachusetts, sitting in said circuit court, this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-one.

THOS. L. NELSON, *D. J.*

APRIL 7, 1891.

Service of the foregoing citation is accepted.

CHARLES P. SEARLE,
Atty. for Plaintiff.

(Indorsement on cover:) No. 461. Leverett Saltonstall, collector of customs for the revenue district of Boston and Charlestown, plaintiff in error, vs. Weibusch & Hilger, Limited. Massachusetts C. C. U. S. Filed May 4, 1891.

155-601
156-601

Office Supreme Court, U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

CASE No. 14621.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

LEVERETT SALTONSTALL, collector for the district of Boston and Charlestown, plaintiff in error,
vs.
WIEBUSCH & HILGER, LIMITED.
No. 150.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR PLAINTIFF IN ERROR.

CASE No. 14621.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

LEVERETT SALTONSTALL, COLLECTOR for the district of Boston and Charlestown, plaintiff in error, *vs.* WIEBUSCH & HILGER, LIMITED.	No. 150.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR PLAINTIFF IN ERROR.

This was an action to recover duties paid under protest. The importations were made in 1889, so that the case is governed by the tariff law of 1883. The imports in question were scythes, sickles or grass hooks, and carpenters' pincers. The case was tried before Judge Nelson and a jury. A verdict was directed for the importers, and the collector assigned error. The name of defendant in error is misprinted in the record. It should begin "Wiebusch," not "Weibusch."

STATEMENT OF FACTS.

The articles in question were classified by the collector under the following provision of the tariff act:

> 216. Manufactures, articles or wares not specially enumerated or provided for in this act, composed wholly or in part of iron, steel, * * * or any other metal, and whether partly or wholly manufactured, 45 per cent ad valorem.

The importers protested, claiming that they were dutiable under the following paragraph:

> 167. Forgings of iron and steel, or forged iron, of whatever shape, or in whatever stage of manufacture, not specially enumerated or provided for in this act, two and one-half cents per pound.

The *scythes* and *grass hooks* were incomplete to this extent only, that the wooden handles had not been put on when the goods were imported. This omission was due to the high price of wood in Europe (p. 30). The *pincers* were complete.

All of these articles were made of *forged steel*. After the process of forging they had been tempered, polished, and ground. It appeared in the testimony that the goods were made in small shops in Europe, and that the tempering there was customarily done by the same person who did the forging. In the United States it appeared that the tempering of similar instruments was done by a different person. In the case of the pincers an employee of the importer testified that the cost of "what is called the nonforged process" is about three or four per cent of the entire work (pp. 8–9). The importers sell the scythes

and pincers in the same condition in which they are received. They sometimes put handles on to the grass hooks before selling them, sometimes not (p. 10).

It appeared in evidence, and indeed was repeatedly and expressly conceded by the importers' counsel, that the articles in question were not commercially known as "forgings." They were bought and sold as scythes, grass hooks, and pincers. So far as appears from the testimony, there are no articles commercially known as "forgings," at least no complete articles (p. 29). It is inferable from the testimony that there have been articles described in certain manufacturers' catalogues as forgings, but the catalogues are not in evidence, and what the articles were does not appear (p. 27); nor does the date of these catalogues appear. If later than 1883, they are incompetent. (*Cadwalader* v. *Zeh*, 151 U. S., 171, 179; *Rossman* vs. *Hedden*, 145 U. S., 561, 570.) The articles in suit at any rate are not so classified (p. 31).

There does, however, seem to be a technical use of the word "forgings" among manufacturers. This designation, however, is not applicable to complete articles or to articles that have been tempered. It applies only to articles as they leave the hands of the forger according to the customs of American manufacture; that is, to articles still in the rough, untempered and ductile (pp. 24, 30, 31, 33).

Upon this testimony the learned judge directed a verdict, stating his reasons in the following opinion (*Wiebusch & Hilger* v. *Saltonstall*, 45 Fed. Rep., 40):

> The question is one of some little perplexity, but the court is obliged to give a ruling upon it, for the present at least, and I am unable, looking at the lan-

guage of these two clauses in this act, to come to any other conclusion than that the articles here, the scythe and grass hook, and carpenters' pincers, must be forgings within the meaning of the specific clause of the statute. They are certainly made by the process of forging substantially, almost completely. It is true there is some slight addition to be made for actual use, like grinding, and sometimes polishing, but still the articles are made by the process of forging out of iron and steel, and come within, it seems to me, the precise language of this special clause. In one sense they are certainly articles which are manufactured—articles which may be classed as wares—but still they are forgings of iron and steel; and it seemes to me, therefore, that I should rule, for the purposes of this case, that the plaintiff's contention is right, and that the articles were dutiable only at the rate of $2\frac{1}{2}$ cents a pound, instead of 45 per cent ad valorem, under the omnibus clause.

I will rule that the language of the special clause is broad enough to cover any article that is made with substantial completeness by the process of forging. There does not seem to be anything here designated by the term "forging" in commerce as distinct from the special purpose for which the forging is to be used, like shatting, or some article of that kind. The evidence here is not sufficient to show that the articles may have other designations; and, besides, in this case scythes and pincers and grass hooks may be "forgings" within the meaning of the special clause, although they may have the other designations.

ASSIGNMENT OF ERROR.

We assign for error the court's ruling at the close of the case in denying the plaintiff's request to go to the jury:

> The defendant's attorney also requested the court to submit to the jury * * * whether upon the evidence the articles are forgings in the meaning of the special clause of the tariff act. The court refused to rule as above requested, and refused to submit to the jury the above questions of fact, * * * and to each ruling the attorney for the defendant then and there excepted.

ARGUMENT.

I.

It is presumed that the collector's decision was correct. The burden was therefore upon the importers to bring their goods within the paragraph relied upon in their protest. (*Arthur* v. *Unkart*, 96 U. S., 118; *Earnshaw* v. *Cadwalader*, 145 U. S., 247, 262; *Herrman* v. *Robertson*, 152 U. S., 521, 523; *Erhardt* v. *Schroeder*, 155 U. S., 124.)

II.

A common law judgment being a unit, there must be a reversal unless a direction was proper as to each of the articles in suit, namely, scythes, grass hooks, and pincers. (*Arthur* v. *Victor*, 127 U. S., 572, 578.)

III.

The decision of the trial court was not supported by any evidence of technical designation upon which the importers

could rely. The positive testimony as to usage among manufacturers, and negative testimony as to commercial usage, tended to support the decision of the collector.

But if there be no commercial or other technical designation, we are left to the ordinary use of the word "forgings." (*Swan* v. *Arthur*, 103 U. S., 597, 598; *Maddock* v. *Magone*, 152 U. S., 368, 371.) Of this usage the court takes judicial notice. (*Nix* v. *Hedden*, 149 U. S., 304.) This seems to have been conceded by counsel; and they were, therefore, forced to contend that anything which had been forged was a "forging," unless the expense of subsequent processes formed a considerable part of the total expense of producing the articles in question.

IV.

The articles, however, are not "forgings," as the word is commonly used. The common usage, like the manufacturer's usage, implies an uncompleted article, as is familiar to all and as is recognized in the dictionary definitions. Worcester gives no definition. The Century Dictionary, Webster's 1890 edition, and the Imperial Dictionary agree upon the same definition:

> A *piece* of forged work in metal; a general name for *pieces* of hammered iron or steel.

This definition evidently does not contemplate a complete article. A scythe or a pair of pincers would never be referred to as a piece of work, or as a piece of steel.

V.

The articles in question are not "forgings" within the meaning of the statute.

"Forgings of iron" are evidently something not the equivalent of "forged iron." Of course all "forgings of iron" are "forged iron." The latter phrase, however, conveys naturally a wider meaning, and unless it be regarded as having actually a wider meaning in the statute it becomes an absolutely useless piece of repetition. An unmistakable indication, however, that it is not mere repetition, is given by the fact that the word "forged" applies to iron alone, while the word "forgings" applies to iron and steel alike. Yet the importers' counsel were forced upon the trial to contend substantially that all forged iron articles were iron forgings within the meaning of the act.

The phrase "in whatever stage of manufacture" also implies that the article in question is not completely manufactured, but in a transition state. The statutory phrase when articles in the completed state are intended to be included is, as in the paragraph first above quoted, "whether partly or wholly manufactured."

It is significant that the importers were not able to find anybody to swear that scythes, sickles, and pincers are known either in commerce or in manufacture as "forgings." The word is one not commonly used by the general public; one which belongs quite peculiarly to trade and manufacture. They are obliged to argue that the article is a forging because, on account of the undeveloped state of the manufacture in Germany, the whole article is made there by the person who does the forging work. The industry in that empire has not reached the stage of division of labor. Thus counsel were able to seize upon the statement of the collector's witness that an article "ceases to be a forging when it leaves the hands of the forger" (p. 24), and argue that an article coming from

Germany remains a forging by this reasoning after it has been tempered, ground, and polished.

This argument would make the interpretation of acts of Congress vary with the varying conditions of industry in foreign countries. An article might be taxed low if made in Germany, while the same article would be taxed high if made in France. It is unnecessary, however, to consider what effect this theory might have on the "most favored nation clause" of our treaties. American usages, as testified to by the witness, relate to American and not to European methods of manufacture. Foreign usages have nothing to do with tariff interpretation. (*Elliott* v. *Swartwout*, 10 Pet., 137, 151.) The meaning of the tariff law is the same everywhere. (*Maddock* v. *Magone*, 152 U. S., 368, 371.)

Judge Nelson's ruling is opposed to that of Judge Somerville as general appraiser. (Syn. Dec., 10,657.)

VI.

Steel articles are not within the paragraph relied upon by the importers, even when they are forged, unless they are strictly "forgings." The paragraph includes "forged iron," but not forged steel. The distinction between iron and steel is carefully preserved in the statute. Thus compare paragraphs 148 and 177, 151 and 152, 154 and 177, and see paragraph 183.

There being no evidence tending to discredit the collector's classification, it is respectfully submitted that the judgment should be reversed.

EDWARD B. WHITNEY,
Assistant Attorney General.

Office Supreme Court, U. S.
FILED.
JAN 8 1895
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1894.

LEVERETT SALTONSTALL, Collector for the District of Boston and Charlestown,
Plaintiff in Error,
vs.
WIEBUSCH & HILGER, LIMITED.

No. 150.

IN ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR DEFENDANT IN ERROR.

FRANCIS LYNDE STETSON,
CHARLES P. SEARLE,
ALBERT COMSTOCK,
EVERIT BROWN,
Of Counsel.

CHARLES P. SEARLE,
Attorney for Defendant in Error.

C. G. Burgoyne, Walker and Centre Streets, N. Y.—1895.

Supreme Court of the United States.

LEVERETT SALTONSTALL, Collector for the District of Boston and Charlestown,
Plaintiff in Error,

vs.

WIEBUSCH & HILGER, LIMITED.

IN ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MASSACHUSETTS.

Brief for Defendant in Error.

1.

The question whether or not the importations in controversy were properly described as "forgings" would seem not to be here in adequate shape for review. The assignment of error relates to the refusal of the judge at circuit to leave to the jury certain questions of fact, and to charge them a certain proposition of law. Upon the trial it was urged, though it is not now assigned for error, that he refused to rule that the term "forging" is used to designate what are commercially known in trade as "forgings." But the evidence showed conclusively that nothing was known commercially as "forgings;"—the term has no trade significance whatever. This is admitted by the plaintiff in error in his

brief (p. 3). Hence it would have been palpably improper for the court so to rule. The next following alleged error (though not here assigned) is disposed of by the same consideration. It is that the court refused, though requested by the defendant, to submit to the jury whether the articles imported by the plaintiff were known to the trade in a commercial sense as forgings of iron and steel. Finally, it was evidently not error, as alleged (and solely here assigned as error), for the court not to leave to the jury whether, on the evidence, the articles are forgings in the meaning of the special clause of the tariff act. As is clearly pointed out on page 6 of the opposing brief, in the absence of commercial or other technical designation, we are to construe and apply the clauses of the act according to ordinary usage, of which courts take judicial notice. The meaning of language in common speech is matter of law, and not for the jury.

Toplitz vs. Hedden, 146 United States, 252.
Erhardt vs. Ullman, 1 U. S. Appeals, 257.
Vom Cleff vs. Magone, 57 Fed. Rep., 198.

Hence, if the court had acceded to this request of the plaintiff in error, an error warranting reversal would thereby have been committed.

Upon this last assignment, the plaintiff in error rests his case before this court (see his brief, p. 5). No allegation having been made, either at circuit or here, that the court had erroneously construed the clause of law involved, it would seem that it cannot properly be argued now that such error was committed.

Hinde's Lessees vs. Longworth, 11 Wheat., 199.
Evans vs. Gee, 11 Peters, 80.
Davis *et. al.* vs. Fredericks, 15 Otto, 4.

2.

But if the propriety of the construction adopted by the court below be here for review, the fact remains that such construction was entirely correct. Upon the evidence it was clear that no usage had arisen, technical, scientific or commercial, to pervert the word "forgings" from its ordinary and logical meaning. The plaintiff in error, while admitting this in one part of his brief (p. 3), seems inclined to throw some vague doubt upon it in another part of the same page. But a glance at the testimony he refers to shows that it was with entire propriety ignored by the court below. Thus the witness on page 29, record, from whose testimony alone is sought support for the assumption that there may be a commercial category of "forgings," said that he knew no article known in trade as a "forging simply," and, a moment afterward, that the term "might apply to *these* articles." Surely such testimony is without weight.

The testimony as to any understanding among manufacturers was more voluminous, but not more worthy of consideration by the Court. For it is quite clear that, unless there was some concurrence between the witnesses, no usage could be implied even so far as to require submission to the jury. If, then, we examine the evidence adduced on this point, we find that no two agreed as to what they would regard as "forgings." One (p. 24) said that forged articles were considered forgings until the forger had completed his work on them. He knew that in small establishments the forger both hammered and tempered the work, and it is interesting to note that it is proven that these importations were thus made (record, pp. 10, 11). Another (p. 29) said that a forging might be complete or incomplete. There are articles known as complete forgings; something else done on them beside the forging process. Another (p. 32), that the articles in controversy were some kind

of forgings. Another (p. 19) said that a forging meant a mass of metal brought to a desired shape, and would include a forged article after being turned in a lathe. Still another (pp. 19-21), that the term is recognized among manufacturers as covering the articles in controversy. Thus the evidence completely demonstrated the absence of the understanding sought to be proved, and there was nothing for the jury as to that, nor could the court, in considering the construction to be put upon the clause of the statute, regard this evidence as of any other or further effect than to prove the absence of a technical usage.

3.

Coming, then, to the ordinary meaning of the word "forgings," it is in the first place observable that it is a word very simply and clearly defined by the lexicographers. It is not dwelt on at any length. Its meaning is best found by reference to "forge," "forged," "forger," and similar words, more fully defined.

We have collated, in Appendix A, sufficient definitions to show the soundness of this proposition. The definition of "forging" as "that which is forged"—found in several of the works—seems to us entirely full, fair and logical. It seems clear from both direct and indirect definitions, that "forgings" is a very broad word, and includes in general the products of the forge. There is no contrary indication in the definition quoted in the opposing brief. The articles in controversy are literally "pieces of forged work in metal." To suppose that a "piece," to come within this definition, *must not* have the shape of any particular article of use or ornament would be absurd, and is entirely at variance with the whole trend of the definitions as cited.

4.

It is common knowledge that all articles of the character of those in controversy, were, under primitive conditions, entirely forged. To this day it is done wherever the products of the large factory are not readily obtainable. Every well equipped farm or smithy away from large cities has its forge, and the proprietors are prepared to forge nails, tools, etc., as needed. It is only modern subdivision of labor and refinement of taste which have led to their being brightened as were the jaws of these pincers, or polished as the grass-hooks were to be polished after importation (Record, p. 15). The articles are, for all substantial purposes, the same without as with these embellishments, and where these importations come from it seems that the man at the anvil still does the entire work; in other words, he *finishes his forging*. No contention is made that things from one country should pay a lower rate than the same things from another, but if sickle blades were *forged* in Germany and were *cast* in England, the resultant articles would not be the same thing. The usages of this country cannot be cited as availing in a question like this. The statute has provided for forgings, and if all the rest of the world made a certain article by casting, and only one small country by forging it, the article when imported *from that country* must be classed as a forging. The proof shows that on the articles in controversy, the filing, polishing, or what not, done by the forger after his hammer is laid by, represent about four per cent. of all the labor done on the article (p. 8), and that it is no more than is done in producing the rough-turned forgings testified about (p. 19) by another witness. Surely there is nothing in the producing of these articles to deprive them of their logical character as forgings; pieces of forged work in metal.

5.

But the court below, in construing the statute, was not required, nor indeed at liberty, to regard the mere word "forgings." On the one hand this word was limited by the enumeration of iron and steel as the only metals within the scope of the paragraph, and, on the other, it was greatly expanded by the provision "of whatever shape, or in whatever stage of manufacture." There was thus very instructive context in the paragraph itself, and the neighboring paragraphs threw still further light upon it. For on a reference to the statute (22 Stats. at L., p. 498) we find the clearest intent on the part of Congress to provide generally for all cast, and for all forged, articles of iron and steel. The paragraphs which, in the Treasury publication, are numbered 156, 157, 161, provide consecutively for the castings. Those from 162 to 167 provide for the forgings. In each case numerous complete articles are denominatively provided for—*in castings*, sadirons, stove-plates and vessels; *in forgings*, rivets, anchors, bolts, nuts, hammers and track tools. And in each case there is what may be termed a residuary clause, widely including all cast or forged articles not thus specially provided for. Throughout these provisions, the rates vary from one cent, to two and one-half cents, per pound, the latter on forgings, doubtless as requiring greater labor for their production. Thus many articles, necessarily finished as much or more than those here in controvery, are specially provided for at the same rate contended for as to the latter. The threads on forged bolts and nuts cannot be made with a hammer, nor can an anvil be finished for use without tempering. In view of these provisions it seems evident that when Congress said "in whatever stage of manufacture," it meant the same as though the words had been "complete or incomplete." The plaintiff in error contends that the phrase was one of exclusion, which seems to us an intrinsically

unreasonable construction for the words employed. "When articles in the completed state are intended to be included," says he, "the phrase is 'whether wholly or partly manufactured.'" This is drawing large conclusions from small premises. At one place those words were used, and he concludes that where different words were chosen, although their intrinsic meaning be the same, Congress must have intended a different meaning. As well might he say, "Where partly made articles were intended to be included, 'in whatever stage of manufacture,' was the phrase employed," and proceed to the conclusion that, by "wholly or partly manufactured," Congress must have meant only complete articles.

6.

Some stress has been laid in the opposing brief on the words "forgings of iron and steel, or forged iron," and it is there argued that "forgings" is a word of narrower meaning than "forged iron."

We submit that it is palpably broader. Forged iron would be logically *mere material*, in the mass, not formed into an article. Forgings are *distinctly articles* produced from iron and steel by the forging process. So that while it is true that forgings would in one sense be forged metal, there is another sense in which they would not, just as marble statuary is in one sense cut stone, but in another and fairer sense it is not, and both are provided for in the tariff law which we are discussing (22 Stats. at L., 513–14). This sufficiently explains the wording, perhaps needlessly verbose, of the paragraph for forgings. On the other hand, his construction of the paragraph for forgings, as applying only to the first product of the fire and hammer, overlooks

the fact that of such an article there can be but one "stage of manufacture," since until it becomes such article it is not a forging at all. Thus such a construction is in violent opposition to the very letter of the law. As to the use of "and" between "iron" and "steel," of which indeed our learned opponent makes no difficulty, it may be well to point out that beside the provision of Revised Statutes, Section 1 (definitions), that "words importing the plural number may include the singular," the Attorney-General's office has given its opinion on this identical paragraph, that it provides for forgings of *either iron or steel*.

Opinions Attys.-Genl., Vol. 19, p. 157.

And the same construction has long prevailed at the Treasury Department.

Decisions, S. 8037, 8894, 8964.

See, also, Jackson vs. Topping, 1 Wendell, 388.

7.

So evident an analogy is presented by the provisions for castings and forgings, that a judicial construction of either throws much light on the other. The cases of Wolff vs. Spalding, 26 Fed. Rep., 609, and Winkelmeyer vs. Whitney, 29 Fed. Rep., 780, involved articles which the importers contended were dutiable as castings. The reports above referred to are very meagre, but in Treasury decisions 5939 and 6829 a fuller description of the articles is found. They were large articles whose use was as face plates, and which, after being cast, had been drilled, polished and otherwise finished. The Treasury denied the claims of the importers, seeking to limit the provision for castings to rough castings, or things *merely* cast. But the cir-

cuit court reversed these rulings, and the Treasury then acquiesced, no appeals being taken. Yet the provision for castings was not amplified nor extended by any such words as "in whatever stage of manufacture." It might have been said with some show of reason that the law had seen fit to provide, in that paragraph, only for the rough article produced by the casting process, without any subsequent work, but that cannot be said of forgings, for they have been provided for in several stages of manufacture, and it would not accord with sound construction were we to construe this as covering only an article which knows but one stage of manufacture.

8.

The workman at the anvil, with his water tank and his forge fire at hand, as he struck the steel, plunged it into water, thrust it again into the fire and again hammered it into shape, and finally laid down his hammer and passed the edge of the scythe blade once or twice across the grindstone, would surely have been puzzled had one told him he had not been producing a forging. It was a forging not provided for denominatively, and we must pass the several provisions for especially-named forgings. But we cannot get by the paragraph for *all forgings not specially provided for*, and therefore we cannot come to the provision at the end of the metal schedule for all manufactures of metal wholly or partly manufactured. This is the basket provision of the schedule, and catches only what has found no earlier place. Every forging is a manufacture of metal wholly or partly manufactured. But "forged manufactures" is a more specific provision than "manufactures," and by settled doctrines of construction, takes precedence of and excludes it.

Seeberger vs. Cahn, 137 United States, 95.
Isaacs vs. Jonas, 148 United States, 648.
Bogle vs. Magone, 152 United States, 623.

Thus the presumption in favor of the Collector, dwelt on by the plaintiff in error, and which never survives the production of evidence showing a more apt provision than the one he resorted to, has no place in this controversy if, as we think is fairly proven, these importations were forgings, substantially the result of the forge, the hammer and the anvil, and merely advanced to a further stage of manufacture by application for a moment to the polishing or grind stone.

9.

The judgment of the Circuit Court was right, and should be affirmed.

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APPENDIX A.

Definitions of "Forge," "Forger," "Forging," etc.

Century Dictionary: "Forge—verb. To form by heating in a forge and hammering; beat into some particular shape, as a mass of metal."

"Forging—noun. A piece of forged work in metal; a general name for pieces of hammered iron or steel."

Appleton's Encyclopedia: "Forge—noun. Forges differ from foundries and blast furnaces in their products being articles of wrought iron, while those of the latter are castings."

Worcester's Dictionary: "Forge—verb. To form by the furnace and hammer; to beat into shape, as a metal."

"Forger—noun. One who forges or works at a furnace."

Imperial Dictionary: "Forging—noun. The thing forged; a piece of forged work in metal; a general name for pieces of hammered iron or steel."

Encyclopedic Dictionary (Cassell, 1888): "Forging—noun. That which is forged; a piece of forged work."

International Encyclopedia (1888): "Forge—forging. The process of hammering red-hot iron or steel into any required shape is called forging."

Encyclopedia Britannica: "Forge. * * * Machinery and separate tools are now often forged in this manner."

American Dictionary of Commerce, Manufactures, Commercial Law and Finance, Colange (1880): "Forger—In the cutlery trade, one who forms or fashions a tool or implement from the bar or rod of steel."